

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

DAMONE L. McNAMEE

Plaintiff,

vs.

**NOTICE OF REMOVAL
CIVIL ACTION NO.**

ANTHONY L. PORZIO

Defendant.

Pursuant to 28 U.S.C.A. §1331, 1441 and 1446, Defendant **ANTHONY L. PORZIO**, by the undersigned attorney hereby removes this action to the United States District Court for the Western District of New York. Removal is proper and this Notice of Removal is submitted by the undersigned attorney for the following reasons:

1. This action is pending in the Supreme Court, of the State of New York, County of Erie, and captioned: **DAMONE L. McNAMEE v. ANTHONY L. PORZIO**, and was filed with the **Index No. 2009-1544**. Defendant was noticed of this action by the service of a Summons and Complaint on or about February 24, 2009.

2. Based upon the venue where this action was commenced in the state court, the United States District Court of the Western District of New York, would be the proper venue for removal of this action.

3. Copies of all pleadings in this matter that have been served to date, to wit the Summons and Complaint are attached hereto (Exhibit A). The defendant has not served an Answer in this matter.

4. This Court has jurisdiction over this action pursuant to 28 U.S.C.A. §1331.

5. The plaintiff has alleged a violation of federal civil rights pursuant to the provisions of 42 U.S.C.A. §1983. No other causes of action are enumerated in plaintiff's Complaint. (See Exhibit A)

6. The defendant intends to comply with the provisions of 28 U.S.C.A. §1446(d) with regard to service of this notice upon all parties and with regard to filing of this Notice with the Court of originality.

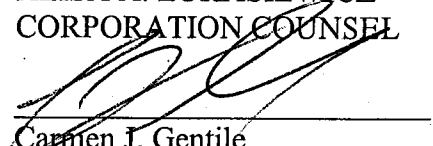
7. Attached is an Index referencing the Summons and Complaint as the only documents known to have been filed in this matter to date. (Exhibit B)

WHEREFORE, notice is hereby given that this action is removed from the New York State Supreme Court, County of Erie to the United States District Court for the Western District of New York.

DATED: Buffalo, New York
March 4, 2009

Respectfully submitted,

ALISA A. LUKASIEWICZ
CORPORATION COUNSEL



Carmen J. Gentile
Assistant Corporation Counsel
Attorney for Defendant Porzio
1132 City Hall : 65 Niagara Square
Buffalo, New York 14202
Tel.: (716) 851-4332
Fax: (716) 851-4105
E-mail: cgentile@city-buffalo.com

TO: Clerk of United State District Court
for the Western District of New York

Clerk of the Supreme Court of the State of
New York, Erie County

David Gerald Jay, Esq.
Attorney for Plaintiff
69 Delaware Avenue, Suite 1103
Buffalo, New York 14202
Tel.: (716) 856-6300

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

DAMONE L. McANAMEE

Plaintiff

-vs-

**CERTIFICATE OF
SERVICE**

ANTHONY L. PORZIO

Defendant.

CIVIL ACTION NO.

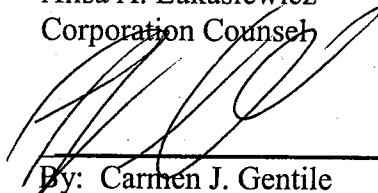
I, Carmen J. Gentile, Assistant Corporation Counsel of counsel to Alisa A. Lukasiewicz, Corporation Counsel for the City of Buffalo and hereby representing the defendant Anthony L. Porzio certifies that the foregoing Notice of Removal and attachments thereto were caused to be filed with the Clerk of the United States District for the Western District of New York on March 4th, 2008 and such Notice of Removal and exhibits thereto were also caused to be filed with the Court Clerk for the New York State Supreme Court, County of Erie on said date.

A true copy of the afore mentioned documents were served and delivered to the following parties of record:

David Gerald Jay, Esq.
69 Delaware Avenue, Suite 1103
Buffalo, New York 14202

Respectfully submitted,

Alisa A. Lukasiewicz
Corporation Counsel



By: Carmen J. Gentile
Assistant Corporation Counsel
Attorney for Defendant
Anthony L. Porzio
1132 City Hall-65 Niagara Square
Buffalo, New York 14202
Tel.: (716) 851-4332
Fax.: (716) 851-4105
cgentile@city-buffalo.com

EXHIBIT

A

SCANNED

FILED
02/11/2009 14:21:11
ERIE COUNTY CLERK
RCPT # 662937
I 2009001544

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

DAMONE L. McNAMEE,

Plaintiff,

v.

COMPLAINT

ANTHONY L. PORZIO,

Index No. 2009-1544

Defendant.

Plaintiff, by his attorney, DAVID GERALD JAY, as and for his Complaint against the Defendant herein, alleges:

JURISDICTION

1. Plaintiff was at all times pertinent to the Complaint a resident of the County of Erie and State of New York.
2. Upon information and belief, the Defendant was at all times hereinafter mentioned a resident of the County of Erie and State of New York.

THE FACTS

3. On or about Tuesday, the 4th day of December, 2007, plaintiff was outside premises commonly known as 227 Reed Street, located in the City of Buffalo, County of Erie and State of New York.

4. At that time and place, plaintiff had been pursued by the defendant and was in the process of submitting to arrest by said defendant, when the defendant, for no reason whatsoever, discharged his weapon and shot the person of the plaintiff. At the time that defendant shot plaintiff, plaintiff had halted his attempts to avoid arrest and was submitting to the authority of defendant, offering him no resistance whatsoever.

5. At that time and place, the Defendant was a police officer employed by the City of Buffalo.

6. At that time and place, the Defendant was acting in the course of his employment as a police officer of the City of Buffalo.

7. At that time and place, the Defendant was acting in the scope of his authority as a police officer of the City of Buffalo.

THE CLAIM

8 The Defendant, at the time and place indicated, was acting under color of law of the State of New York and deprived Plaintiff of the privileges and immunities guaranteed to every citizen of the United States, including Plaintiff, by the United States Constitution, Amendments 4, 5, 6 and Section 1 of Amendment 14, and by reason thereof, this Court has jurisdiction over Plaintiff's claims for violation of his Federal Civil Rights, pursuant to the provisions of 42 U.S.C. § 1983.

9. That defendant violated plaintiff's constitutional rights in that defendant shot an unarmed man who was submitting peacefully to lawful authority. There was neither a reason nor any necessity for defendant to discharge his weapon at all, particularly to discharge it in the direction of plaintiff.

10. That the actions of the defendant were wilful, wanton, oppressive and illegal.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

1. Plaintiff demands judgment for general compensatory damages against the Defendant in such sum as a jury may allow as damages, which sum exceeds the

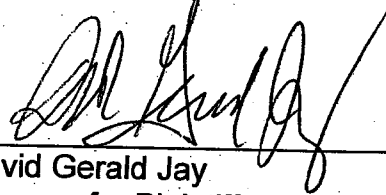
jurisdictional limits of all lower courts which would otherwise have jurisdiction over this action;

2. Plaintiff also demands judgment for exemplary or punitive damages against the Defendant in such sum as a jury may allow as damages, which sum exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this action.

3. All together with the costs and disbursements of this action.

DATED: Buffalo, New York
January 15, 2009

DAVID GERALD JAY

A handwritten signature in black ink, appearing to read 'David Gerald Jay', written over a horizontal line.

David Gerald Jay
Attorney for Plaintiff
69 Delaware Avenue, Suite 1103
Buffalo, NY 14202
(716) 856-6300

Attorney Verification by Affirmation

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
CITY OF BUFFALO)

DAVID GERALD JAY, an attorney at law duly licensed to practice in the courts of the State of New York, affirm:

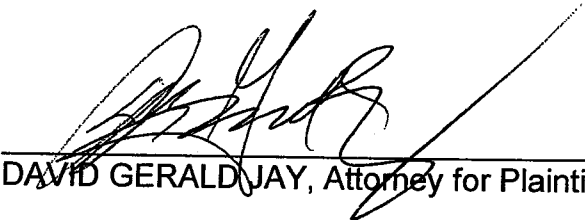
That I am the attorney of record for the plaintiff, DAMONE L. McNAMEE.

I have read the annexed Complaint and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon my discussions with my client and my review of the police and medical documents.

The reason I make this affirmation instead of DAMONE L. McNAMEE is due to the fact that my client is an inmate at Clinton Correctional Facility in Clinton County, New York.

I affirm that the foregoing statements are true under penalties of perjury.

DATED: Buffalo, New York
 February 9, 2009



DAVID GERALD JAY, Attorney for Plaintiff

EXHIBIT

B

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

DAMONE L. McNAMEE,

Plaintiff,

-VS-

ANTHONY L. PORZIO,

Defendant.

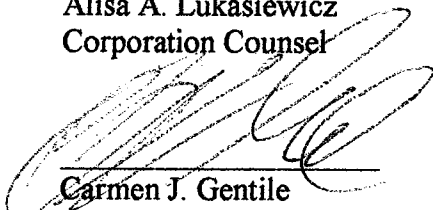
**INDEX OF
DOCUMENTS FILED:
CIVIL ACTION NO.**

All documents filed with the Erie County Clerk's Office (the Clerk of the Supreme Court, Erie County for purposes of commencing a lawsuit) include:

1. Summons and Complaint filed on or about February 11, 2009 in Supreme Court, County of Erie as Index No. 2009-1544.

Respectfully submitted,

Alisa A. Lukasiewicz
Corporation Counsel



Carmen J. Gentile
Assistant Corporation Counsel
Attorney for Defendant
Anthony L. Porzio
1132 City Hall-65 Niagara Square
Buffalo, New York 14202
Tel.: (716) 851-4332
Fax.: (716) 851-4105
cgentile@city-buffalo.com

TO: David Gerald Jay, Esq.
Attorney for Plaintiff
69 Delaware Avenue, Suite 1103
Buffalo, New York 14202